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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
11  
12

13 **Jeff Macy, as an individual,**  
14  
Plaintiffs,  
15  
v.  
16  
17 **California Highway Patrol, a State**  
**Agency; Officer Christopher Bates;**  
18 **Supervisor Officer Sergeant Jeffrey**  
**O'Brien, and Does 1 - 10, inclusive,**  
19  
20 Defendants.  
21

Case No. 5:23-CV-02245-RGK-BFM

**OPPOSITION TO PLAINTIFF  
JEFF MACY'S MOTION FOR  
SANCTIONS**

Judge: Hon. Brianna Fuller Mircheff  
Trial Date: Not Set  
Action Filed: 5/06/2024

22 Defendants Officer Christopher Bates and Sergeant Jeffrey O'Brien hereby  
23 oppose Plaintiff Jeff Macy's motion for sanctions. The facts do not warrant the  
24 imposition of sanctions in this matter.

25 **INTRODUCTION**

26 From the outset of the deposition at issue, Plaintiff Macy's responses  
27 demonstrated his displeasure of submitting to a deposition, which is reflected in the  
28 present motion. As demonstrated by the transcript of the deposition, Defendants'

counsel Deputy Attorney General (DAG) Julio Hernandez conducted the deposition with professionalism while faced with a challenging witness. Moreover, nothing in the conduct of the deposition warrants imposition of sanctions on defendants or DAG Hernandez. Defendants request that the motion be denied.

### FACTS

On October 1, 2024, the deposition of plaintiff Jeff Macy was completed. (Declaration of Julio A. Hernandez, ¶2.) The deposition took place in a conference room in San Bernardino, California. (*Ibid.*) In attendance were Plaintiff Jeff Macy, his wife Julie Macy, Stacy M. Wilson, court reporter, Saxon Christin, Videographer, and DAG Hernandez. (*Ibid.*)

Prior to the deposition commencing, Plaintiff Macy objected to the deposition and video recording of the deposition. (*Id.*, at ¶3.) However, only the objection to the video recording was placed on the record. (*Ibid.*) On October 8, 2024, counsel for Defendants sent a meet and confer letter to plaintiff Macy on the video recording objection before seeking the Court's intervention. (*Ibid.*) Consequently, Defendants have not taken possession of the video recording of the deposition. (*Ibid.*)

From the outset of the deposition, Plaintiff Macy objected to questions seeking relevant background information, such as confirming his address. (*Id.*, at ¶4.) During the deposition, plaintiff Macy continually interrupted DAG Hernandez's questioning and provided unresponsive testimony. (*Ibid.*; A true and correct condensed copy of the transcript of the deposition of Plaintiff Macy is attached as Exhibit A to the Hernandez Decl.) About a little over an hour into the deposition, DAG Hernandez raised his voice to stop plaintiff Macy from providing unresponsive testimony. (*Id.*, at ¶6.) At no time did DAG Hernandez get off his seat, lunge at plaintiff Macy, or "reach across the table in Plaintiff's face."<sup>1</sup> (*Ibid.*)

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<sup>1</sup> The video recording of the deposition demonstrates that DAG Hernandez was not near Plaintiff Macy's face.

1 DAG Hernandez immediately sought to go off the record, and once the parties were  
2 off the record, DAG Hernandez apologized to all the participants. (*Ibid.*) Once back  
3 on the record, DAG Hernandez again apologized to Plaintiff Macy. (*Ibid.*) DAG  
4 Hernandez did not again raise his voice even though Plaintiff Macy's interruptions  
5 and non-responsive answers continued, unnecessarily prolonging the deposition.  
6 (*Ibid.*)

7 DAG Hernandez sincerely apologizes to the Court for any unbecoming  
8 conduct. (*Id.*, at ¶7.) However, as further discussed below, an imposition of  
9 sanctions is not warranted.

## 10 LEGAL ARGUMENT

### 11 I. PLAINTIFF'S JUSTIFICATION FOR THE IMPOSITION OF SANCTIONS.

12 Plaintiff's justification for the imposition of sanctions is enumerated as  
13 follows:

- 14 (1) The deposition was improper because plaintiff Macy is self-  
15 represented and therefore "opposing counsel." (Plaintiff's Motion  
for Sanctions, at 2:21-3:7; 3:13-14.);
- 16 (2) Irrelevant questions were asked during the deposition  
(*Id.* at 3:11-12.);
- 17 (3) DAG Hernandez directed questions to Mrs. Macy.  
(*Id.* at 3:15-17.);
- 18 (4) DAG Hernandez raised his voice and was rude, obnoxious, and  
threatening towards Plaintiff Macy. (*Id.* at 3:9-10; 3:12-13.).

19 None of plaintiff's argument for the imposition of sanctions is supported by  
20 authority or admissible evidence. Nonetheless, defendants shall respond to each  
21 argument below.

### 22 II. DEFENDANTS ARE ENTITLED TO DEPOSE MR. MACY AS HE IS THE 23 PLAINTIFF IN THIS CASE.

24 Plaintiff Macy, who is self-represented, argues he is not subject to deposition  
25 because in effect he is "opposing counsel." (*Id.* 3:13-14.) However, Plaintiff Macy  
26 is a party to the case and not an attorney.

27 Depositions are governed by Federal Rule of Civil Procedure Rule 30, which  
28 states in pertinent part that "[a] party may, by oral questions, depose any person,

1 including a *party*, without leave of court . . . ." Fed. R. Civ. P. 30(a)(1) (emphasis  
2 added.) A self-represented party is bound by the same rules as attorneys. *Smith v.*  
3 *Weiss*, No. 1:18-cv-00852-, 2020 U.S. Dist. LEXIS 233619, at \*10 (E.D. Cal. Dec.  
4 10, 2020).

5 In this matter, Plaintiff Macy is a party to the case; thus, he is subject to be  
6 deposed even though he is self-represented. Plaintiff's position that a self-  
7 represented party is shielded from deposition because they are "opposing counsel"  
8 would prevent any self-represented party from ever being deposed. This argument  
9 is simply untenable and does not comport with the plain language of Federal Rules  
10 of Civil Procedure Rule 30.

11 The three California appellate court cases cited by Plaintiff do not support his  
12 position. As a preliminary matter, those cases are not binding in federal Court.  
13 Regardless, the facts and circumstances in those cases are inapposite here. In  
14 *Carehouse Convalescent Hosp. v. Superior Court*, 143 Cal. App. 4th 1558 (2006),  
15 the appellate court denied the deposition of an attorney because there were other  
16 means to obtain the discovery sought by plaintiff. *Spectra-Physics, Inc. v. Superior*  
17 *Court*, 198 Cal. App. 3d 1487 (1988), arose out of a discovery dispute pending a  
18 good faith settlement motion, wherein the appellate court denied the deposition of  
19 non-settling parties' counsel, finding that the noticing party did not produce  
20 sufficient evidence to justify the deposition and it had other means of obtaining the  
21 same information. Finally, in *Trade Ctr. Props., Inc. v. Superior Court of S.F.*, 185  
22 Cal. App. 2d 409 (1960), the appellate found that it would be against public policy  
23 to have the deposition of the opposing counsel because the noticing party did not  
24 show good cause warranting the deposition of counsel.

25 The three cited California cases are clearly distinguishable from Plaintiff  
26 Macy's deposition. First, the cases involved counsel for a party, which Plaintiff is  
27 not. Second, the court found that the noticing parties had other means to obtain the  
28 discovery; here, Plaintiff Macy is a party to the case and there is no other way to

1 obtain Plaintiff's deposition testimony of the traffic stop that is the subject of the  
2 litigation prior to trial. And third, there was no good cause that overcame the public  
3 policy to avoid deposition of party counsel, whereas here, Plaintiff *is* a party. None  
4 of the facts in this matter are remotely similar to the cited California cases and the  
5 deposition is permitted by Federal Rule of Civil Procedure Rule 30. Moreover, no  
6 written objection was presented prior to the date of the deposition.

7 Because Defendants are entitled to take Plaintiff Macy's deposition, it cannot  
8 be a basis for the imposition of sanctions.

9 **III. ASKING QUESTIONS SUBJECT TO A RELEVANCE OBJECTION IS NOT A**  
10 **BASIS FOR IMPOSITION OF SANCTIONS; NONETHELESS, IRRELEVANT**  
11 **QUESTIONS WERE NOT ASKED.**

12 "The Federal Rules of Civil Procedure contemplate that, absent exceptional  
13 circumstances (which generally involve third parties or the depositions of  
14 attorneys), depositions are expected to be taken, with all objections relating to the  
15 scope or relevance of a specific deposition question being noted on the record and  
16 then the question being answered by the deponent." *Hesselbrock v. I.Q. Data Sys.*,  
17 No. CV 23-2169 FLA (PVCx), 2024 U.S. Dist. LEXIS 71772, at \*6 (C.D. Cal.  
18 Mar. 20, 2024). During a deposition, an attorney may properly state objections  
19 "concisely in a nonargumentative and nonsuggestive manner." Fed. R. Civ. P.  
20 30(c)(2). "If a party believes that a particular question asked of a deponent is  
21 improper for any other reason, that party may object; however, 'the examination  
22 still proceeds; the testimony is taken subject to any objection.'" *Mendez v. R+L*  
23 *Carriers, Inc.*, 2012 U.S. Dist. LEXIS 60148, 2012 WL 1535756, at \*1 (N.D. Cal.  
24 Apr. 30, 2012) (quoting Fed.R.Civ.P. 30(c)(2).) Therefore, it was proper for  
25 Plaintiff to cite an objection on the record and answer the question regardless of the  
26 objection. If necessary, Plaintiff can seek the Court's ruling on his objections,  
27 which he has not done, but must still provide a response. However, an objection for  
28 relevance is not a proper basis for the issuance of sanctions.

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Moreover, the deposition questions may relate to "any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1), The Rules of Civil Procedure provide the parties latitude to make relevant inquiries at a deposition.

An examination of the questions subject to Plaintiff Macy's objections demonstrate that they were proper and appropriate. Plaintiff Macy objected on relevance or privilege grounds to the following questions:

Objected Question	Transcript Location
My understanding is that your current address is 26175 Augusta Way in Lake Arrowhead. Is that correct?	13:16-18
Zip Code is 92352?	13:22
What is your date of birth, sir?	14:5
You're married?	15:2
Do you have any other children, sir?	15:12
What's your wife's name, sir?	15:17
What is her [wife's] name, sir?	15:25
How long have you been at the Augusta Way address?	16:23-24
And how long have you been married, sir?	20: 3
And do you have any other children, sir?	21:7

Plaintiff either reluctantly answered the questions or refused to answer. The purpose of these questions was to determine additional potential witnesses, obtain background information about Plaintiff, assess his potential damages claims, and confirm information gathered from Court records filed by plaintiff. All the objected-to questions were both relevant and proper. Even if the Court does not agree they are relevant or if they are subject to privilege, these questions cannot be a basis for the imposition of sanctions because they were asked in good faith in connection with plaintiff's claims in this lawsuit.

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1 **IV. THERE WERE NO ON-THE-RECORD QUESTIONS TO MRS. MACY.**

2 Plaintiff offers no authority that asking a third-party questions during the  
3 deposition, either off or on the record, is a basis for sanctions. Nonetheless, DAG  
4 Hernandez did not ask any on-the-record questions to Mrs. Macy. (Hernandez Decl.  
5 ¶5; Macy Dep. Transcript.) While DAG Hernandez exchanged pleasantries prior to  
6 and after the deposition with Mrs. Macy, such short and appropriate interactions are  
7 not a basis for sanctions. (*Ibid.*)

8 **V. COUNSEL'S CONDUCT DOES NOT WARRANT AN IMPOSITION OF**  
9 **SANCTIONS.**

10 **A. Legal Standard on Sanctions for Unbecoming Conduct at a**  
11 **Deposition.**

12 "The guiding premise of the Federal Rules of Civil Procedure directs attorneys  
13 and courts "to secure the just, speedy, and inexpensive determination of every  
14 action and proceeding. See Fed. R. Civ. P. 1. Rule 30 implements Rule 1's goals by  
15 prescribing how attorneys should behave during depositions. The Rule provides  
16 that "examination and cross-examination of a deponent proceed as they would at  
17 trial." Fed. R. Civ. P. 30(c)(1). Two things are implicit in the Rule 30's command  
18 that examination must "proceed as [it] would at trial." First, attorneys must follow  
19 the same procedures as they would at trial. [] Second, attorneys must conduct  
20 themselves as they would at trial. *Id.* ("[C]ounsel should not engage in any conduct  
21 during a deposition that would not be allowed in the presence of a judicial  
22 officer.")." *Dunn v. Wal-Mart Stores, Inc.*, No. 2:12-cv-01660-GMN-VCF, 2013  
23 U.S. Dist. LEXIS 157554, at \*2-3 (D. Nev. Nov. 1, 2013).

24 "Conduct unbecoming a member of the bar is a serious concern. See Wright &  
25 Miller, Federal Practice and Procedure: Civil 3d § 2113 n. 19 (discussing Rule 30  
26 [\*3] and citing *Redwood v. Dobson*, 476 F.3d 462 (7th Cir. 2007). If, at a  
27 deposition, an attorney fails to proceed as he or she would at trial, Rule 30(d)(2)  
28 provides that, "[t]he court may impose an appropriate sanction—including the  
reasonable expenses and attorney's fees incurred by any party—on a person who



1 impedes, delays, or frustrates the fair examination of the deponent." Fed. R. Civ. P.  
2 30(d)(2).” *Ibid.*

3 “The plain language of Rule 30(d)(2) indicates that the court's inquiry is  
4 twofold. First, the court must determine whether a person's behavior has impeded,  
5 delayed, or frustrated the fair examination of the deponent. See Fed. R. Civ. P.  
6 30(d)(2). Second, the court must "impose an appropriate sanction." *Id.* The Ninth  
7 Circuit provides District Courts with wide discretion to fashion "an appropriate  
8 sanction." *Yeti by Molly, Ltd. v. Deckers*, 259 F.3d 1101, 1106 (9th Cir. 2001); *Von*  
9 *Brimer v. Whirlpool Corp.*, 536 F.2d 838, 844 (9th Cir. 1976). The 1970 Advisory  
10 Committee's Notes to Rule 30(d)(2) state that the expenses incurred in relation to a  
11 Rule 30(d) motion triggers Rule 37(a)'s cost-payment provisions.” *Ibid.*

12 As discussed below, DAG Hernandez’s conduct does not warrant sanctions.

13 **B. Defendants’ Counsel’s Conduct Was Professional and a Single**  
14 **Instance Does Not Warrant Sanctions.**

15 The October 1, 2024, deposition was held in a large conference room.  
16 (Hernandez Decl. ¶2.) The conference room is approximately 20 by 30 feet and  
17 comfortably accommodated all six individuals present. (*Ibid.*) The conference room  
18 table used to conduct the deposition is approximately 6 by 10 feet in dimension.  
19 (*Ibid.*) The deposition was video recorded; however, due to Plaintiff Macy’s  
20 objection, defendants have not taken possession of the recording. (*Id.* at ¶3.)

21 DAG Hernandez admits that he raised his voice in one instance to stop  
22 Plaintiff Macy from continuing an ongoing non-responsive answer. (*Id.* at ¶6.)  
23 DAG Hernandez was attempting to establish the evidentiary foundation and scope  
24 of a video that was posted on YouTube purporting to demonstrate the traffic stop  
25 that is the subject of this litigation. (*Ibid.*) After repeated interruptions and  
26 unresponsive replies, DAG Hernandez, in a moment of frustration, raised his voice  
27 to stop Plaintiff Macy from continuing his non-responsive response. (*Ibid.*)  
28 (Attached as Exhibit A to the Hernandez Declaration is a reproduction of the line of



1 questioning that led up to DAG Hernandez raising his voice. (*Ibid.*; Macy Dep.  
2 65:25-73:5.))

3 DAG Hernandez immediately attempted to go off the record, however,  
4 Plaintiff Macy initially refused. (*Ibid.*; Macy Dep. 73:5-74:23.) Once the parties  
5 were off the record, DAG Hernandez apologized to Plaintiff Macy and the others  
6 present. (*Ibid.*) Upon return on the record DAG Hernandez again apologized to  
7 Plaintiff Macy. (*Ibid.*; Macy Dep. 75:5-16.) Moreover, DAG Hernandez now  
8 apologizes to the Court for any unbecoming conduct. (*Id.* at ¶7.)

9 At no time did DAG Hernandez reach “across the table in Plaintiff’s face,”  
10 which would have required DAG Hernandez to stand up and lunge at Plaintiff due  
11 to the size of the conference room table. (*Id.* at ¶2, 6.) Rather, DAG Hernandez  
12 reached out his hand in open palm in a “stop” gesture, but did not get off his seat,  
13 lunge at the deponent, or otherwise act in an aggressive or threatening manner. (*Id.* at  
14 ¶6.) DAG Hernandez never used profanity, insulted the deponent, or in any other  
15 way attempted to impede the deposition. (*Ibid.*) Rather, the deposition continued  
16 with Plaintiff’s ongoing interruptions of DAG Hernandez’s questions, but  
17 nonetheless, DAG Hernandez did not again raise his voice despite the challenging  
18 witness. (*Ibid.*)

19 Other than in single moment when DAG Hernandez raised his voice to instruct  
20 Plaintiff Macy to stop a nonresponsive answer, DAG Hernandez allowed Plaintiff  
21 Macy to provide lengthy testimony responses. DAG Hernandez’s single instance of  
22 raising of the voice did not impede, delay, or frustrate the fair examination of  
23 Plaintiff Macy. As the transcript of the deposition demonstrates, there was no  
24 ongoing unbecoming conduct by DAG Hernandez. Rather, the deposition continued  
25 and was completed, notwithstanding Plaintiff’s Macy ongoing interruption of DAG  
26 Hernandez’s examination.

27 ///

28 ///

1 In contrast, Plaintiff's motion does not provide any facts that demonstrate that  
2 DAG Hernandez was rude, obnoxious, or threatening in any way, other than the  
3 conclusory statements.

4 Thus, the conduct during the deposition does not warrant the imposition of  
5 sanctions.

6 **CONCLUSION**

7 There is no basis for the imposition of sanctions in this matter. First, the  
8 deposition of Plaintiff Macy was proper, notwithstanding his claims of being  
9 "opposing counsel." Second, the examination was within the bounds of the issues  
10 of the complaint. Third, no other witness was examined under oath. Fourth, other  
11 than a single instance of DAG Hernandez raising of the voice to stop an  
12 unresponsive answer, there was no other unbecoming conduct by Defendants'  
13 counsel. And finally, the deposition was completed. Thus, the facts on the  
14 deposition do not warrant an imposition of sanctions, and Defendants respectfully  
15 request that the motion be denied.

16 Dated: October 22, 2024

Respectfully submitted,

17 ROB BONTA  
18 Attorney General of California  
19 IVETA OVSEPYAN  
Supervising Deputy Attorney General

20 */s/ Julio A. Hernandez*

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendants Christopher Bates and Jeffrey O'Brien, certifies that this brief contains **2,648** words, which:

  X   complies with the word limit of L.R. 11-6.1.

       complies with the word limit set by court order dated           .

Dated: October 22, 2024

/s/ Julio A. Hernandez  
Julio A. Hernandez  
Deputy Attorney General

**DECLARATION OF SERVICE BY E-MAIL AND U.S. MAIL**

**Case Name:** *Macy, Jeff, et al. v. California Highway Patrol, et al.*  
**Case No.:** **5:23-CV-02245-RGK-BFM**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **October 22, 2024**, I served the attached **OPPOSITION TO PLAINTIFF JEFF MACY'S MOTION FOR SANCTIONS** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Jeff Macy  
P.O. Box #103  
Twin Peaks, CA 92391  
**E-mail:** [macybuilders@yahoo.com](mailto:macybuilders@yahoo.com)

*In Pro Per*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **October 22, 2024**, at Sacramento, California.

Donna Kulczyk  
Declarant

/s/ Donna Kulczyk  
Signature